

 <div style="text-align: center;"> <b>STATE OF ALASKA</b>  <b>DEPARTMENT OF TRANSPORTATION</b>  <b>AND PUBLIC FACILITIES</b> </div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">Policy and Procedure</div>		POLICY AND PROCEDURE NUMBER <div style="text-align: center; font-weight: bold;">10.02.012</div>	PAGE <div style="text-align: center;">1 of 5</div>
		EFFECTIVE DATE <div style="text-align: center;">February 28, 2001</div>	
SUBJECT <div style="text-align: center; font-weight: bold;">Force Account Construction</div>		SUPERSEDES <div style="text-align: center;">05.01.080</div>	DATED <div style="text-align: center;">5/25/94</div>
TITLE <div style="text-align: center; font-weight: bold;">Procurement and Property</div>	CHAPTER <div style="text-align: center; font-weight: bold;">Contracting</div>	APPROVED BY	

## PURPOSE

To provide guidance and establish the criteria in requesting approval for use of force account work on construction related projects. This policy and procedure applies to all construction projects, regardless of estimated project cost or source of financing.

## POLICY

In accordance with Federal requirements and State law, it is the policy of the Department that force account construction may be performed by:

- the Alaska Department of Transportation and Public Facilities (DOT&PF, or Department),
- a cooperating State agency,
- a Municipality,
- Tribal entities [for Federal Aviation Administration (FAA) AIP funded projects]  
 Tribal entities are identified in *Federal Register Notice, Vol. 60 No. 32*, dated Thursday, February 16, 1995.

A non-profit, or private organization, is not eligible to perform any force account work under the financial control of the State.

## PROCEDURE

Generally, construction of public works is accomplished by the competitive bid process (AS 36.30, the State Procurement Code). However, when cost effective and in the best interest of the State, a cooperating State agency, or in the case of a FAA project, a Municipality, or Tribal entity may perform the work.

For State funded force account work that is less than \$100,000, the Division/Regional Director may make the determination of public interest in support of the proposed force account work. A copy of the Director's determination on public interest must be sent to the DOT&PF Chief Contracts Officer.

For all Federally funded force account work and all State funded force account work that exceeds \$100,000, a written PIF must be submitted to and approved by the DOT&PF Chief Contracts Officer prior to the work.

The PIF must describe the cost effectiveness and efficiency to be achieved in the use of force account labor, equipment, materials and supplies. Other information that may be helpful to the determination may also be added.

Before the Public Interest Finding is submitted to the Chief Contract Officer, it must be routed through the appropriate Director for signature on the “approval recommended” portion of the PIF.

Any entity that performs force account work under an agreement with the State is subject to financial audit and must be able to submit all requested, relevant financial documents.

### ***Force Account PIF Informational Requirements***

There is no standard form for submitting a Force Account, Public Interest Funding. However, the force account PIF must show that the proposed work is cost effective and in the best interest of the State by giving:

- A. The estimate of all costs on wage rates, non-salary expenses, indirect costs, and a comparison of costs between force account construction and a competitively bid construction contract. The estimated cost of construction by force account must be less than the estimated cost to perform under a competitively bid contract. Costs for mobilization of equipment must be included in the cost comparison.
- B. An explanation of:
  - the entity’s resources (labor, material, equipment, and financing) and workload as they affect their ability to satisfactorily do the work;
  - the date when the work is estimated to be completed; or
  - dates when the work will occur.
- C. A description of the nature and extent of the proposed force account work.
- D. A description of the benefits of using force account in lieu of the competitive bid process.

Comparisons in A and D above should be based on actual costs. When “actual” costs are not available, the following information must be provided:

**LABOR** - A detailed evaluation of the labor costs to perform the work. This must include the labor rates (including benefits) for State or municipal forces compared to the Davis-Bacon wage rates a Contractor must pay.

1. **EQUIPMENT** - This element should compare the Blue Book costs for the Contractor's equipment to the State's or the Municipality's rate for the same equipment.
2. **MATERIALS & SUPPLIES** - Assume these costs would be the same for the State, or a Municipality's as that of a contractor. To the Contractor's cost, add a reasonable profit factor for the effected region of approximately 5% - 10%.
3. **COST OF BIDDING** - Include a reasonable cost (e.g. \$5,000) for processing a solicitation. If the project is under \$100,000 this factor need not be applied.
4. **RECORDS** - Complete records documenting all expenditures on the project must be kept for inspection by review by Concurrent Review, or the Quality Assurance Engineer, on all force account projects.

A Municipality that assumes a DOT&PF project must request and receive approval from the DOT&PF the authority to perform any force account work. This request must be in form of a letter or by a resolution by that agency.

### ***Other Information About the Force Account PIF***

All anticipated force account expenses, including the cost of materials and commodities, must be included in the Public Interest Finding document. Even when materials that will be used in the work are on hand or a carryover from a previous project, the value of these materials must be estimated in the PIF and compared to the cost of similar materials from a Contractor.

### **Further:**

- A force account project cannot have significant activities related to Right of Way, Utility or Environmental issues, unless or until they have been adequately addressed and recorded in the force account project records.
- If a force account project is in response to an emergency, the reason(s) that an emergency exists(ed) must be documented (see DPDR 10.01.040 for and explanation of how an emergency can be declared and when an emergency applies to force account work).
- When materials are procured for force account work, they may only be paid for at the amount invoiced by the supplier.
- Once a competitive procurement contract has been established for a project, the Department cannot perform any portion of the work with it's forces, unless approval has been received in advance from the DOT&PF Chief Contracts Officer for coincidental work activities.
- Minimum wage rate requirements do not apply to force account work.
- The appropriate Director must assure that proper contract administration of all force account projects under their jurisdiction is carried out.
- Records documenting all work on a force account project, including the names of the employees involved, must be kept in the project files. These records must be immediately available upon request.

### **THE FORCE ACCOUNT AGREEMENT**

Force account construction is typically allowed with an entity by way of a written contract, a Memorandum of Understanding (MOU), a Memorandum of Agreement (MOA), or a Transfer of Responsibility Agreement (TORA). Such articles are formalized only after securing approval of the force account determination. An agreement shall not be finalized (i.e. signed as a contract) before the PIF is approved.

**A reminder:**

- **A Memorandum of Understanding (MOU), or a Memorandum of Agreement (MOA) is utilized between the Department and other State agencies, the Federal Government, or with a Municipality.**
- **A Transfer of Responsibility Agreement (TORA) is used for an agreement with a Municipality or Borough.**

## **DEFINITIONS**

**Construction or a derivative of the term construction -**

means construction, reconstruction, alternation, improvement or major repair.

**Cost Effective -**

means the use of labor, equipment, materials and supplies in a way(s) that assures the lowest overall cost.

**Department -**

means the Department of Transportation and Public Facilities (DOT&PF).

**Force Account -**

means the direct performance of work by Department employees, a cooperating State agency, Municipality or (for Federal Aviation Administration [FAA] AIP funded projects - Tribal entity [see FAA guidance documents when performing force account work with FAA funds]) by use of labor, equipment, materials and supplies furnished by them and used under their direct control.

**State's best interest -**

There is no single or comprehensive definition established by statute or code that fits the term *"in the state's best interest"* for every occasion. In 2 AAC 12.415, within the context of Single Source procurements (and which works for this document), is the definition: *" . . . a determination that is reasonable under the circumstances and is neither arbitrary, capricious, or prompted by corruption."*

The terms *"best interest," "best interest of the public," "best interest of the state," "best interest of the department"* and, *"advantageous to the state"* (or similar sentence structure) should be considered synonymous terms.

**Public Interest Finding (PIF) -**

A Public Interest Finding is the typical document and permanent record used to satisfy a *'findings-of-fact'* and *"State's best interest"* requirements on certain types of construction related work. Force account is but one form of procurement that requires a PIF.

## **AUTHORITY**

### **State Statutes**

AS 19.10.170, AS 35.15.010, AS 35.15.080-120, AS 44.33.300

### **State Codes**

17 AAC 055.030

### **United States Code**

23 USC 112

### **Code of Federal Regulations**

23 CFR 635. Subpart B Force Account Construction

23 CFR 172.13

### **Federal Aviation Administration**

- AIP Handbook - FAA Order 5100-38A, page 130, section 4, Sponsors Force Account, paragraph 1230-1234;
- FAA Advisory Circular 150-5100-10A, Account Records Guide for Airport Aid Sponsors (published 1976), page 21, paragraph 42, Force Account;
- FAA Advisory Circular 150-5370-10A, page 43, paragraph 90-05, General Provisions on Standards for Special Construction of Airports - Payments for Force Account Work

### **Other Reference Sources**

- Alaska Construction Manual, Section 2.08.02 - Change Orders
- Project Control Operations Manual - Chapter IV, "Transfer of Responsibility Agreements (TORAs)"

## **IMPLEMENTATION RESPONSIBILITY**

DOT&PF Chief Contracts Officer

## **DISTRIBUTION**

All holders of the Policy and Procedures Manual